

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0016P**

**Use Tax**

**Calendar Years 1997, 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is an Indiana limited partnership with two partners. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items.

**I. Tax Administration** – Penalty

**DISCUSSION**

Taxpayer protests the penalty assessed and states the underpayment is wholly attributable to use tax, and as a result of the audit, taxpayer has implemented procedures to identify use tax liabilities in the future. Taxpayer requests an abatement of the penalties as they were incurred on use taxes due to an oversight on their part and not an intentional disregard of the law.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to self assess and remit use tax on one hundred percent of its purchases in 2000

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and remitted less than ten percent (10%) of the tax due in 1997, 1998, and 1999 and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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